



KATHLEEN NESS (ON RECONSIDERATION)

188 IBLA 63

Decided June 27, 2016



United States Department of the Interior
Office of Hearings and Appeals
Interior Board of Land Appeals
801 N. Quincy St., Suite 300
Arlington, VA 22203

703-235-3750

703-235-8349 (fax)

KATHLEEN NESS (ON RECONSIDERATION)

IBLA 2015-242-1

Decided June 27, 2016

Motion for reconsideration of the Board's decision in *Kathleen Ness*, 186 IBLA 263 (2015), affirming the Bureau of Land Management's decision to cancel movant's private maintenance and care agreement for three wild horses.
Freezemark Nos. 10613578, *et al.*

Motion for reconsideration denied.

1. Administrative Procedure: Adjudication;
Rules of Practice: Appeals: Reconsideration

Under our regulations, extraordinary circumstances can be shown if the movant presents evidence that was previously unavailable and explains why the evidence was not provided to the Board during the course of the original appeal. The movant must also show that the evidence demonstrates error in the Board's decision. Such a demonstration is required because motions to reconsider are designed to permit relief only in extraordinary circumstances; they are not a vehicle to revisit issues already addressed or advance arguments that could have been raised in prior briefing, but were not.

APPEARANCES: Kathleen Ness, Lakeland, Florida, *pro se*; J. Nicklas Holt, Esq., Office of the Field Solicitor, Knoxville, Tennessee, for the Bureau of Land Management.

OPINION BY CHIEF ADMINISTRATIVE JUDGE JONES

Summary

In a Decision dated October 30, 2015,¹ the Board affirmed the Bureau of Land Management's (BLM) cancellation of appellant's private maintenance and care agreement for three wild horses. Appellant now asks us to reconsider our Decision. We may grant reconsideration when a movant demonstrates that "extraordinary circumstances" warrant reconsideration.² Such extraordinary circumstances include the movant's presentation of evidence and corresponding arguments that were not before the Board at the time we decided the case that demonstrates error in the Board's decision.³ Here, appellant asserts that the Board should now consider new material without explaining why she did not present it during the initial appeal period or without showing how it demonstrates error in our Decision. Since we conclude that she has presented no extraordinary circumstances that would warrant reconsideration, we deny appellant's motion for reconsideration.

I. Summary of the Underlying BLM Decision to Cancel the Agreement and the Board's Affirmance of that Decision

Appellant signed an agreement with BLM to adopt and care for three wild horses (Freezemark Nos. 10613578, 03745353, 10797402). After BLM received complaints from several different boarding facility operators regarding appellant's failure to pay boarding costs for her adopted horses, BLM conducted an inspection. BLM discovered the facility boarding the horses did not provide the animals with adequate shelter or forage and that one of the horses was severely underweight. BLM instructed appellant to relocate the horses to another facility and to make sure the malnourished horse gained weight. BLM verbally warned appellant that a future inspection would take place and that the horses would be removed from appellant's possession if she could not comply with the instructions.

Upon re-inspection 2 months later, BLM found that the horses had not been located to a new facility, the underweight animal "was starving," and appellant had not paid the boarding fees for the animals. BLM therefore cancelled the agreement on August 3, 2015, because appellant was not providing the horses with proper care. Appellant received BLM's decision cancelling her agreement by certified mail on August 6, 2015. On August 9, 2015, BLM repossessed the horses.

¹ *Kathleen Ness*, 186 IBLA 263.

² 43 C.F.R. § 4.403(b)&(c).

³ *Id.* § 4.403(d)(4).

When appellant appealed BLM's decision to the Board, we affirmed BLM's decision to cancel the agreement. The evidence demonstrated that appellant signed an agreement to be financially responsible for providing the horses with proper care. Appellant did not pay for costs associated with boarding and sheltering the adopted animals and appellant did not relocate the horses, which violated the terms of her agreement and BLM's instructions. Appellant did not present any arguments or evidence to rebut the record evidence and we therefore affirmed BLM's decision to cancel the agreement.

II. Appellant's Motion for Reconsideration Only Contains Evidence and Arguments That Could Have Been Submitted During the Course of Her Original Appeal and Therefore Reconsideration is Not Warranted

[1] In reviewing a motion for reconsideration, we evaluate whether a movant has demonstrated that extraordinary circumstances exist.⁴ Under our regulations, a movant seeking reconsideration may show extraordinary circumstances by presenting evidence that was previously unavailable and therefore was not before the Board at the time we issued the decision.⁵ In doing so, the movant must explain why the evidence and corresponding arguments were not provided to us during the course of the original appeal and must show that the material demonstrates error in the Board's decision.⁶ Such a showing is required because motions to reconsider are designed to permit relief in extraordinary circumstances; they are not a vehicle to revisit issues already addressed or to advance arguments that could have been raised in prior briefing, but were not.⁷

In her motion for reconsideration, as modified by additional exhibits received by the Board on June 6, 2016, appellant raises three arguments she did not include in her initial pleadings. First, appellant argues that BLM did not follow certain guidelines for conducting inspections. Citing to BLM guidance issued in 2004,⁸ appellant argues that BLM should have provided her with 7 days written notice prior to the follow-up inspection and should have also provided her with a written

⁴ *Id.* § 4.403(c)(1).

⁵ *Id.* § 4.403(d)(4); see *Board of County Commissioners of Pitkin County, Colorado (On Reconsideration)*, 187 IBLA 328, 331 (2016).

⁶ 43 C.F.R. § 4.403(e)&(d)(4); see also *Leo Wittner (On Reconsideration)*, 186 IBLA 30, 31 (2015).

⁷ See, e.g., *Debra Smith (On Reconsideration)*, 180 IBLA 107, 108 (2010).

⁸ *Conducting Compliance Checks for BLM's Wild Horse and Burro Adoption Program*, H-4760-1, IV-1A.2 (Rel. 4-108).

inspection report.⁹ Appellant states that the agency's failure to follow these guidelines constitutes reversible error.¹⁰

Second, appellant states the reasons she chose not to pay boarding fees associated with the horses' shelter and care. Appellant believes the Board should consider that she was refusing to pay her boarding fees because the facility owners had placed the welfare of the horses at risk. Therefore, appellant states that BLM had no right to cancel the agreement or confiscate the horses.¹¹ She also requests a hearing to resolve her private dispute over the boarding fees.¹²

Third, appellant presents evidence, which shows that she made arrangements on August 3, 2015 -- 3 days before she knew BLM cancelled her agreement -- to transport the horses to another boarding facility.¹³ She has appended to her motion for reconsideration an email communication from another facility owner confirming that appellant contacted her on August 3, 2015, to inquire about transporting the horses to the new facility. Even though she never actually moved the horses to a new facility, appellant argues that the Board should consider this evidence as an indication that she was complying with the inspector's instructions to relocate the horses.¹⁴

While appellant's arguments and evidence are newly presented in her motion for reconsideration, she has not explained why she did not raise them during her initial appeal. Nor has she explained how these arguments demonstrate error in our Decision. Appellant simply has not shown extraordinary circumstances for failing to raise these arguments during the original appeal and therefore she may not raise them now. Instead, appellant seeks solely to readjudicate BLM's decision anew. On these grounds, appellant cannot meet her burden to demonstrate that reconsideration is warranted.

⁹ See Motion for Reconsideration at 2 and attachments. *But see Conducting Compliance Checks for BLM's Wild Horse and Burro Adoption Program*, H-4760-1, IV-1A.2 (Rel. 4-108) (allowing BLM to perform an unannounced inspection in instances where, like in appellant's case, inadequate facilities or care is involved).

¹⁰ See Motion for Reconsideration at 2.

¹¹ See Answer to BLM Response and Request for a Hearing at unpaginated (unp.) 1.

¹² See *id.* at unp. 1-2; see also 43 C.F.R. § 4.415.

¹³ See Answer to BLM Response and Request for a Hearing at unp. 1.

¹⁴ See *id.* at unp. 2.

Conclusion

We conclude that appellant has failed to demonstrate the existence of any extraordinary circumstance warranting reconsideration of our Decision.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior,¹⁵ we deny appellant's motion for reconsideration and dismiss this case from our docket.

_____/s/_____
Eileen Jones
Chief Administrative Judge

I concur:

_____/s/_____
Amy B. Sosin
Administrative Judge

¹⁵ 43 C.F.R. § 4.1.